IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION (W.P.) NO 1 OF 2005

Menino Gomes, House
No.464, Near Tonca
Bridge, Post Marcela,
Goa. ... Petitioner

Versus

State of Goa, through
Chief Secretary,
Govt. of Goa. ... Respondent.

Mr. N. N. Sardessai, Amicus Curiae.

Ms. Winnie Coutinho, Government Advocate for the State.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : **26th September, 2005.**

P.C.

By our Order dated 5th September, 2005, we appointed Mr. N. N. Sardessai, Advocate of this Court as Amicus Curiae to assist us in the petition that has been filed as a Public Interest Litigation.

2. The petitioner is an erstwhile Marine Inspector. He was employed in the office of the Captain of Ports, Panaji and after his

retirement he is said to have taken up social work. By means of this Writ Petition he has raised the grievance in respect of the unauthorized and illegal construction in the agricultural land bearing survey no.40/2 situate at Ella Village, Tiswadi Taluka. It is alleged that the said agricutural land bearing survey no.40/2 was in occupation of Smt. Parvati Shiva Subha More, Rajendra More, Govind More, Vinayak More, Satish More and Sanjay More as tenants and they are said to have sold the said land to one Teofilo D'Souza by registered sale deed dated 26th July, 1999. It is alleged that the purchaser had set up two small scale industries over the agricultural land and is carrying on industrial activity under the name and style of M/s Royal Engineering Works illegally.

3. In the affidavit in reply dated 2nd September, 2005, the Captain of Ports has alleged that though the Writ Petition has been styled as "Public Interest Litigation", yet it is nothing but a camouflage to foster a personal dispute between the petitioner and Teofilo D'Souza. He has admitted that encroachment of 233 sq. mts. has been established by the Surveyor, Settlement of Land Records but the said encroachment is not in survey no. 40/2 as alleged by the petitioner, but in front of survey no.40/2. He has

stated that the said encroachment shall be removed by him in accordance with law on 27th September, 2005.

4. We find no reason not to accept the statement of the Captain of Ports made in his affidavit dated 2nd September, 2005 that the encroachment as referred to in paragraphs 4, 5 and 6 of his reply affidavit dated 2nd September, 2005 shall be removed. Needless to say that in exercise of the powers conferred on him under the Indian Ports Act, 1908, the Goa, Daman and Diu Port Rules, 1983 and all other relevant laws, the Captain of Ports has to ensure that the encroachment of 233 sq mts. that has been found by the Surveyor, Settlement of Land Records is removed and action taken report is submitted by him within one month from today.

5. The Captain of Ports shall ensure that after removal of the encroachment/reclamation in front of survey no.40/2 village Ella, near the river Mandovi, no encroachment/reclamation is done.

6. With the aforesaid direction, we are satisfied that no further order needs to be passed in the Writ Petition.

7. The Writ Petition is disposed of accordingly.

R. M. LODHA, J.

N. A. BRITTO, J.

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